

Section by Section of H.R. 2761 The Terrorism Risk Insurance Revision and Extension Act of 2007

Section 1 -- Short Title and References

This section clarifies that, unless expressly noted, all references in this bill ("TRIREA") are to the Terrorism Risk Insurance Act ("TRIA") of 2002, as amended (15 U.S.C. 6701 note).

Section 2 -- Findings and Purpose

Section 3 -- 10-Year Extension of Program

This section extends the duration of TRIA until December 31, 2017 and maintains the insurer deductible for property-casualty insurance at 20 percent of an insurer's direct earned premiums. This insurer deductible applies only to property-casualty insurance losses resulting from conventional acts of terrorism.

This section sets the total amount property-casualty insurers are required to collect through surcharges for recoupment to the federal government following a certified act of terrorism at the lesser of: (i) \$27.5 billion; and (ii) the aggregate amount of insured property-casualty insurance losses during the Program Year. To recoup funds, the Secretary of the Treasury ("the Secretary") will determine a surcharge, not exceeding three percent of direct earned premiums for property-casualty insurance, for as many years as necessary to recoup the required amount.

Section 4 -- Coverage of Domestic Terrorism

This section extends TRIA to cover domestic acts of terrorism.

Section 5 -- Adjustment of Program Trigger

This section reduces from \$100 million to \$50 million the aggregate insured losses the insurance industry must sustain in order to trigger the TRIA Program.

Section 6 -- Definitions

This section amends or adds definitions to the list of defined terms related to the TRIA Program.

Control -- Amends the definition of "control" under TRIA so that it conforms to the definition of control under the Bank Holding Company Act.

Previously Impacted Area -- Gives the Secretary the authority to designate an area that has suffered substantial and direct economic impact as a result of an act of

terrorism during the 15-year period prior to enactment of the legislation as a “previously impacted area”.

NBCR Terrorism -- Defines an act of terrorism that involves nuclear, biological, chemical, or radiological reactions, releases, or contaminations as “NBCR terrorism”.

Excess Insured Loss -- Defines losses during any Program Year for which the Federal share of the loss exceeds \$100 billion as “excess insured loss”.

Group Life Insurance -- Defines “group life insurance” to include term life, group universal life, group variable universal life, and accidental death; but not to include Corporate Owned Life Insurance or Business Owned Life Insurance. In the context of “group life insurance,” this section also defines “amount at risk” as the death benefit less any cash value.

Section 7 -- Coverage of Group Life Insurance

Section 7 of TRIREA adds group life insurance as a covered line under the TRIA Program. This section also establishes a means of calculating insurer deductible that applies to group life insurance and is designed to equate economically with the 20 percent of direct earned premium metric used to calculate an insurer’s deductible for property-casualty insurance. Under TRIREA an insurer’s deductible for group life insurance equals 0.0351 percent of that insurer’s amount at risk of group life insurance for the previous year.

This section also sets the amount life insurers are required to collect through surcharges for recoupment to the federal government following a certified act of terrorism at the lesser of: (i) \$5 billion; and (ii) the aggregate amount of insured group life insurance losses during the Program Year. To recoup funds, the Secretary will determine a surcharge, not exceeding 0.0053 percent of the amount at risk, for as many years as necessary to recoup the required amount.

Section 8 -- Coverage for Nuclear, Biological, Chemical, and Radiological Events

This section requires that when certifying an event as an act of terrorism, the Secretary must also determine whether the certified act constitutes an act of NBCR terrorism.

The TRIA Program currently covers acts of NBCR terrorism, but permissible exclusions in the underlying insurance policies as provided under applicable state law allow most property-casualty insurers to omit such coverage. Under this section of TRIREA, insurers are required to make available coverage for acts of NBCR terrorism in all covered lines.

This section also sets separate insurer deductibles for losses arising out of NBCR terrorism. For property-casualty lines of insurance, an insurer’s deductible is equal to

7.5 percent of premiums earned by the insurer in the previous year from policies insuring U.S.-based, TRIA-eligible, risks. For group life insurance, an insurer's deductible is equal to 0.0132 percent of an insurer's amount at risk in the previous year for covered lines of insurance.

Finally, this section waives rate and form prior approval or waiting period requirements for NBCR terrorism insurance products through December 31, 2008.

Section 9 -- Insured Loss Shared Compensation

Section 9 of TRIREA alters several components of the TRIA Program by:

Calculating Insurer Co-Payments Differently for Conventional & NBCR Terrorism -- TRIREA maintains at 85 percent the federal government share of conventional terrorism insured losses above an insurer's deductible. However, TRIREA establishes a separate step-down co-payment structure that applies only to NBCR terrorism losses. Under this mechanism, the federal government share of NBCR losses above an insurer's deductible increases (starting at 85 percent for qualified losses below \$10 billion and increasing to 95 percent for qualified losses above \$60 billion) as the size of an NBCR terrorism event increases.

Capping Annual Government Liability at \$100 Billion Net of Insurer Obligation -- Under TRIA the \$100 billion annual cap on program losses applies to both the insurance industry and the federal government. TRIREA changes this cap by providing that the \$100 billion ceiling would apply only to federal outlays under the program. Under this modification, insurers would continue to pay applicable deductibles and co-payments only up to \$100 billion in insured losses, but Congress would not have to decide how to cover additional costs until the federal government has paid out \$100 billion.

Requiring Treasury to Provide Advance Notice if Terrorism Losses are Likely to Exceed the Program's \$100 Billion Cap -- If the Secretary determines that estimated or actual aggregate federal compensation equals or exceeds \$80 billion, the Secretary must promptly provide notification to Congress and to insurers in the Federal Register and reaffirm that insurers are not required to make payments for losses exceeding the cap. The Secretary must also give notice and reaffirmation when aggregate federal compensation equals or exceeds \$100 billion and within ten days of an event that is likely to pierce the \$100 billion liability cap.

In addition to these significant changes in the TRIA Program, Section 9 of TRIREA also:

- Mandates that within 120 days of enactment Treasury finalize regulations regarding *pro rata* claims allocations and payments that take into consideration the emergency needs of persons affected by an act of terrorism;

- Establishes new statutory disclosure requirements so that all TRIA-eligible policies detail the maximum level of Government assistance and the applicable insurer share;
- Clarifies that an insurer's financial exposures are confined to its applicable deductible and co-payments;
- Requires the Secretary to reimburse insurers for: (1) payments that exceed the cap made before the Treasury provides notice that the cap has been pierced; and (2) payments that exceed the cap when ordered by a court. In the specific instance of such court ordered payments, TRIREA requires that the insurer have defended the claim in good faith and grants the Secretary the right to intervene in the action;
- Grants federal courts original and exclusive jurisdiction to hear cases related to claims arising from insurer's financial responsibility for insured losses from acts of terrorism if the Secretary certifies that the liability cap has been or is likely to have been exceeded, and the insurer has paid, or is likely to pay, its deductible and pro rata share of insured losses. In the event of certification, all pending State court actions will be removed to the district court, or courts, chosen by the Judicial Panel on Multidistrict Litigation.

Section 10 -- Post-Event Reset for Previously Impacted Areas

This section provides lower insurer deductibles and triggers after any subsequent attack for any area designated as a "previously impacted area" by the Secretary. Insurer deductibles are reduced by one percent for each \$1 billion in aggregate industry losses resulting from an act of terrorism within the previously impacted area, except that deductibles cannot be reduced below five percent. Similarly, under this section the program trigger would be reduced by \$10 million for each \$1 billion in aggregate industry losses from an act of terrorism in such area, except that the trigger cannot be reduced below \$5 million.

Section 11 -- Mandatory Availability of Life Insurance that does not Preclude Future Lawful Travel

This section expands TRIA's make available requirements to prohibit life insurance companies from denying or limiting coverage based on an insured's past foreign travel or future foreign travel planned more than 12 months after the date of policy inception or renewal. Insurers may, however, deny or limit coverage based on an insured's plans to travel, within 12 months of inception or renewal, to a foreign nation: (i) for which the CDC has issued its highest level alert due to a serious health-related condition; (ii) in which there is an ongoing military conflict involving the armed forces of a sovereign nation; or (iii) for which the insurer has made a good faith determination that an ongoing, serious unlawful situation exists and that the credibility of information to verify the death of the insured person is compromised.

Section 12 -- Expedited Rulemaking

This section allows the Secretary to issue regulations without notice and comment during the 90-day period subsequent to certifying an act of terrorism.

Section 13 -- Analysis and Study

This section requires the President's Working Group ("PWG") on Financial Markets to perform an analysis regarding the long-term availability and affordability of private terrorism risk insurance. The PWG must then report to Congress three times over the life of the program.

This section also creates a blue-ribbon commission on terrorism risk insurance to propose long-term solutions to covering terrorism risk.